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Attorneys for Defendants
GB ACQUISITIONS, INC. and
GORDON BIERSCH BREWERY
RESTAURANT GROUP, INC.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANGELIQUE COBB, on behalf of herself and all others similarly situated, Plaintiffs, vs. GORDON BIERSCH BREWING COMPANY, INC., a California Corporation; GB ACQUISITIONS, INC., a Tennessee Corporation; GB ACQUISITIONS, INC., dba GORDON BIERSCH BREWERY RESTAURANT GROUP, INC.; and DOES 1 through 125, inclusive, Defendants.	CASE NO. 08-CV 0805 W AJB **ANSWER OF DEFENDANTS GB ACQUISITIONS, INC. AND GORDON BIERSCH BREWERY RESTAURANT GROUP, INC. TO PLAINTIFF'S COMPLAINT**

Defendants GB Acquisitions, Inc. and Gordon Biersch Brewery Restaurant Group, Inc. (hereinafter "Defendants GB and GBBRG") answer the Complaint filed against them by Plaintiff Angelique Cobb, individually and on behalf of all others similarly situated, as follows:

1. In answer to Paragraph 1 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

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2. In answer to Paragraph 2 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

3. In answer to Paragraph 3 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

4. In answer to Paragraph 4 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

5. In answer to Paragraph 5 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

6. In answer to Paragraph 6 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

7. Defendants GB and GBBRG deny violation or liability under any of the Labor Code sections and the California Code of Regulations section described in Paragraph 7 of the Complaint. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 7.

8. Defendants GB and GBBRG deny violation or liability under any of the Business and Professions Code sections described in Paragraph 8 of the Complaint. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies or other relief described in Paragraph 8.

8. [sic] With regard to Defendants GB and GBBRG, it is admitted that venue is proper in this judicial district; Plaintiff was employed by Defendant GB in San Diego County; Defendant GB operates a restaurant and does business in San Diego County and has employed other individuals in San Diego County and at other locations in the State of California. Upon information and belief, Plaintiff is believed to be a resident of San Diego County. All other allegations made in Paragraph 8 [sic] of the Complaint are denied.

9. Upon information and belief, Plaintiff Angelique Cobb ("Plaintiff") is believed be to a resident of San Diego County. Defendant GB also admits that it has employed Plaintiff as a server in San Diego County. In this capacity, Plaintiff Cobb has been employed by Defendant

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GB as an hourly employee in a non-exempt capacity. All other allegations made in Paragraph 9 of the Complaint are denied.

10. In answer to Paragraph 10 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

11. Defendant GB is engaged in the ownership and operation of a restaurant located in San Diego County and in other locations in the State of California. As such, Defendant GB has employed Plaintiff and others as non-exempt employees within California and San Diego County. Defendant GB also is conducting business in good standing in California. All other allegations made in Paragraph 11 of the Complaint are denied.

12. Paragraph 12 of the Complaint merely asserts Plaintiff's belief that there may be other defendants against which claims may later be brought by showing the same causes of action which have been alleged against the named Defendants in the present Complaint. As such, there are no allegations in Paragraph 12 of the Complaint appropriate for either admission or denial by Defendants GB and GBBRG. To the extent Paragraph 12 does, however, allege that the named Defendants, including GB and GBBRG, have been/are engaged in some type of joint venture and/or enterprise designed or otherwise having the purpose or effect of violating the law, GB and GBBRG deny these allegations. Defendants GB and GBBRG also deny any theory of joint liability regarding either the named Defendants or unnamed, presently unknown parties.

13. In answer to Paragraph 13 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

14. Defendant GB operates and has conducted business in San Diego County and other places within the State of California. Defendant GB operates restaurants in California selling food and drink items. Defendant GB also has employed persons as servers and other hourly positions at these restaurants. All other allegations made in Paragraph 14 of the Complaint are denied.

15. Defendant GB's restaurants are staffed by, among other positions, non-exempt employees, including, but not limited to, cooks, servers, busers, hosts/hostesses, cashiers,

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dishwashers, other maintenance staff and other incidental positions related to the operation of a restaurant. All other allegations made in Paragraph 15 of the Complaint are denied.

16. Defendant GB employs over a hundred individuals in the State of California in non-exempt positions such as servers and/or other non-exempt positions. All other allegations made in Paragraph 16 of the Complaint are denied.

17. In answer to Paragraph 17 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

18. Defendant GB's non-exempt employees are covered by the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders. All other allegations made in Paragraph 18 of the Complaint are denied.

19. Plaintiff and other non-exempt employees of Defendant GB were paid on an hourly basis for work performed during the class period. All other allegations made in Paragraph 19 of the Complaint are denied.

20. In answer to Paragraph 20 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

21. In answer to Paragraph 21 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

22. In answer to Paragraph 22 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

23. In answer to Paragraph 23 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

24. In answer to Paragraph 24 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

25. In answer to Paragraph 25 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

26. In answer to Paragraph 26 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

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27. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 27 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

28. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 28 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

29. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 29 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

30. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 30 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

31. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 31 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent

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such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

32. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 32 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

33. It is denied that Plaintiff satisfies the representative requirements necessary to pursue a class action pursuant to Section 382 of the Code of Civil Procedure or otherwise. The remaining portions of Paragraph 33 of the Complaint merely describe a class of persons Plaintiff seeks to represent in this matter and, aside from denying that Plaintiff is qualified to represent such persons in this matter, such allegations are not otherwise appropriate for admission or denial by Defendants GB and GBBRG.

34. In answer to Paragraph 34 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

35. Defendant GB admits that it has employed hundreds of hourly employees in California during the relevant period. All other allegations made in Paragraph 35 of the Complaint are denied.

36. Defendant GB admits that it has employed hundreds of hourly employees in California during the relevant period. All other allegations made in Paragraph 36 of the Complaint are denied.

37. In answer to Paragraph 37 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

38. In answer to Paragraph 38 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

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39. Defendants GB and GBBRG are without sufficient information so as to admit or deny the competency and experience level of Plaintiff's counsel. All other allegations made in Paragraph 39 of the Complaint are denied.

40. In answer to Paragraph 40 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

41. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 40 of the Complaint above as though fully set forth herein.

42. In answer to Paragraph 42 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

43. In answer to Paragraph 43 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 43.

44. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 44 of the Complaint.

45. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 44 of the Complaint above as though fully set forth herein.

46. In answer to Paragraph 46 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

47. In answer to Paragraph 47 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 47.

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48. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 48 of the Complaint.

49. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 48 of the Complaint above as though fully set forth herein.

50. In answer to Paragraph 50 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

51. In answer to Paragraph 51 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 51.

52. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 52 of the Complaint.

53. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 52 of the Complaint above as though fully set forth herein.

54. In answer to Paragraph 54 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

55. In answer to Paragraph 55 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 55.

56. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 56 of the Complaint.

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57. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 56 of the Complaint above as though fully set forth herein.

58. In answer to Paragraph 58 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

59. In answer to Paragraph 59 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief described in Paragraph 59.

60. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 60 of the Complaint.

61. Defendants GB and GBBRG incorporate by reference all of the admissions and denials provided to Paragraphs 1 through 60 of the Complaint above as though fully set forth herein.

62. In answer to Paragraph 62 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

63. In answer to Paragraph 63 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

64. In answer to Paragraph 64 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any injunctive or other equitable relief.

65. In answer to Paragraph 65 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

66. In answer to Paragraph 66 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that

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Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any injunctive or other equitable relief.

67. In answer to Paragraph 67 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any injunctive or other equitable relief.

68. In answer to Paragraph 68 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein.

69. In answer to Paragraph 69 of the Complaint, Defendants GB and GBBRG deny each and every allegation contained therein. Defendants GB and GBBRG also deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any injunctive or other equitable relief.

70. Defendants GB and GBBRG deny that Plaintiff and/or all of those she is seeking to represent in this class action are entitled to any of the forms of damages, remedies, attorney fees, costs or other relief referred to in Paragraph 70 of the Complaint.

71. Defendants GB and GBBRG deny that Plaintiff and/or the class of individuals she seeks to represent in this action are entitled to any form of damages or other remedies, relief, attorney fees or costs relating to the allegations made in the Complaint. Defendants GB and GBBRG specifically deny that Plaintiff and/or the class of individuals she seeks to represent in this action are entitled to any of the forms of relief, damages, remedies, attorney fees and/or costs described in the Prayer for Relief section of the Complaint.

72. All other allegations made in the Complaint which have not been expressly admitted or denied above are here and now denied as if expressly denied above.

SEPARATE AFFIRMATIVE DEFENSES

Without waiving or excusing the burden of proof of Plaintiff and the putative class members, or admitting that any of the following are in fact defenses upon which Defendants GB and GBBRG have any burden of proof as opposed to denials of matters as to which Plaintiff and the putative class members have the burden of proof, or that Defendants GB and GBBRG have

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any burden of proof at all, Defendants GB and GBBRG hereby assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

As a first, separate and affirmative defense, the Complaint fails to state facts sufficient to constitute a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As a second, separate and affirmative defense, no conduct by or attributable to Defendants GB and/or GBBRG was the cause in fact or legal cause of the damages, if any, suffered by Plaintiff and/or the putative class members.

THIRD AFFIRMATIVE DEFENSE

As a third, separate and affirmative defense, Plaintiff and the putative class members and/or their agents at all times gave their consent, express or implied, to the acts, omissions, representations and courses of conduct of Defendants GB and GBBRG.

FOURTH AFFIRMATIVE DEFENSE

As a fourth, separate and affirmative defense, the causes of action asserted in the Complaint are barred by the knowing and voluntary assumption of risk by Plaintiff and the putative class members and/or their agents.

FIFTH AFFIRMATIVE DEFENSE

As a fifth, separate and affirmative defense, Plaintiff's and/or the putative class members' claims may be barred, in whole or in part, by their failure to timely assert and exhaust all administrative remedies.

SIXTH AFFIRMATIVE DEFENSE

As a sixth, separate and affirmative defense, Plaintiff and the putative class members lack standing.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh, separate and affirmative defense, Defendants GB and GBBRG acted in good faith and had reasonable grounds for believing their actions did not violate the Labor Code

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and/or the Business and Professions Code and/or any other statute and/or any California Wage Order.

EIGHTH AFFIRMATIVE DEFENSE

As an eighth, separate and affirmative defense, if Defendants GB and/or GBBRG are found to have violated the Labor Code and/or the Business and Professions Code and/or any other statute and/or any California Wage Order, they did not act willfully in so doing.

NINTH AFFIRMATIVE DEFENSE

As a ninth, separate and affirmative defense, if Defendants GB and/or GBBRG are found to have violated the Labor Code and/or the Business and Professions Code and/or any other statute and/or any California Wage Order, they did not do so knowingly.

TENTH AFFIRMATIVE DEFENSE

As a tenth, separate and affirmative defense, Plaintiff's and/or the putative class members' claims are barred to the extent they involve transactions or events or seek damages for any occurrences outside the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

As an eleventh, separate and affirmative defense, Plaintiff's and/or the putative class members' claims may be barred, in whole or in part, by their failure to mitigate damages, if any.

TWELFTH AFFIRMATIVE DEFENSE

As a twelfth, separate and affirmative defense, Plaintiff and the putative class members delayed inexcusably and unreasonably in the filing of this action causing substantial prejudice to Defendants GB and GBBRG and thus Plaintiff's and the putative class members' claims are barred by the equitable doctrine of laches.

THIRTEENTH AFFIRMATIVE DEFENSE

As a thirteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred by the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

As a fourteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred by the doctrine of estoppel.

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FIFTEENTH AFFIRMATIVE DEFENSE

As a fifteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

As a sixteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred since, at all relevant times, Plaintiff and the putative class members were provided meals and rest breaks in accordance with applicable law.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a seventeenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred since, at all relevant times, Plaintiff and the putative class members were provided with all pay, including but not limited to overtime pay, to which they were entitled for hours worked in accordance with applicable law.

EIGHTEENTH AFFIRMATIVE DEFENSE

As an eighteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred since, at all relevant times, Plaintiff and the putative class members were provided with minimum reporting time pay in accordance with applicable law.

NINETEENTH AFFIRMATIVE DEFENSE

As a nineteenth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred since, at all relevant times, Plaintiff and the putative class members did receive the wages, including but not limited to tips, reflected on tax documents issued to them by Defendant GB in accordance with applicable law.

TWENTIETH AFFIRMATIVE DEFENSE

As a twentieth, separate and affirmative defense, the Complaint, and each and every cause of action alleged therein, is barred since, at all relevant times, Plaintiff and the putative class members were reimbursed for any and all specialty items which they were required by Defendant GB to have in order to perform their work in accordance with applicable law.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

As a twenty-first, separate and affirmative defense, Plaintiff and the putative class members have failed to allege and cannot prove the facts and prerequisites necessary to the maintenance of either a class or representative action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As a twenty-second, separate and affirmative defense, any damages recovered by Plaintiff and/or the putative class members, if any, should be reduced by the money that Plaintiff and the putative class members owe Defendant GB, including, but not limited to, monies owed to Defendant GB to the extent that Plaintiff or putative class members misstated or misrepresented their hours worked.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a twenty-third, separate and affirmative defense, Plaintiff's and/or the putative class members' claims against Defendants GB and GBBRG are barred, in whole or in part, because of Plaintiff's and/or the putative class members' failure to exhaust any available contractual remedies and/or failure or refusal to pursue and/or take advantage of any preventive or corrective opportunities provided by Defendant GB, or otherwise to avoid the conduct, acts and/or omissions of which they complain, prior to filing the Complaint.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a twenty-fourth, separate and affirmative defense, Plaintiff's and/or the putative class members' claims against Defendants GB and GBBRG are barred, in whole or in part, because any of the conduct of Defendant GB or its agents that is alleged to be unlawful was taken as a result of fraud or misrepresentations by Plaintiff and/or the putative class members.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

As a twenty-fifth, separate and affirmative defense, negligence, breach of contract, or other fault or misconduct of Plaintiff and/or the putative class members or their agents directly and proximately contributed to Plaintiff's and the putative class members' alleged damages, which conduct either bars or reduces the recovery sought by Plaintiff and the putative class members.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

As a twenty-sixth, separate and affirmative defense, the damages suffered by Plaintiff and/or the putative class members, if any, proximately resulted from the negligence, breach of contract, or other fault or misconduct of parties, persons, and/or entities other than Defendants GB and GBBRG, and the liability of Defendants GB and GBBRG, if any, must be limited in direct proportion to the percentage of fault actually attributable to Defendants GB and GBBRG.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

As a twenty-seventh, separate and affirmative defense, any acts or omissions by Defendants GB and GBBRG were in good faith.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

As a twenty-eighth, separate and affirmative defense, any acts or omissions by Defendants GB and GBBRG were justified.

TWENTY-NINTH AFFIRMATIVE DEFENSE

As a twenty-ninth, separate and affirmative defense, Plaintiff's and the putative class members' claims for injunctive relief are barred because they have an adequate and complete remedy at law, and/or they cannot make the other requisite showings to obtain injunctive relief.

THIRTIETH AFFIRMATIVE DEFENSE

As a thirtieth, separate and affirmative defense, Plaintiff's and/or the putative class members' claims are barred by the provisions of the Employee Retirement Income Security Act, 29 *U.S.C.*, §1001, *et seq.*, ("ERISA") to the extent they claim damages in the form of lost pension or retirement benefits, other fringe benefits or other matters covered by ERISA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

As a thirty-first, separate and affirmative defense, Plaintiff and the putative class members are barred from asserting each and every alleged cause of action contained in the Complaint, and from otherwise asserting any right to relief against Defendants GB and/or GBBRG, because Plaintiff and the putative class members and/or their agents at all times ratified the acts, omissions, representations and courses of conduct of Defendants GB and GBBRG.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

As a thirty-second, separate and affirmative defense, Plaintiff's and the putative class members' causes of action are uncertain.

THIRTY-THIRD AFFIRMATIVE DEFENSE

As a thirty-third, separate and affirmative defense, Plaintiff's and the putative class members' causes of action are barred to the extent they allege claims under Labor Code and Business and Professions Code section 17200, *et seq*., since those claims violate the rights of Defendants GB and GBBRG to substantive and procedural due process as provided under the United States and California Constitution on the grounds that the damages, if any, of each putative class member and each putative represented person require complicated proof of numerous individualized issues, as serious fundamental due process questions are raised, and administrative proceedings are available through the Department of Industrial Relations and/or the Labor Commissioner to provide the putative class members and putative represented persons with an inexpensive and effective remedy.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

As a thirty-fourth, separate and affirmative defense, Plaintiff and the putative class members are not entitled to recover any penalty damages, such as those Plaintiff seeks under Labor Code section 203, or the other causes of action alleged in the Complaint, and any award of such damages or penalties would, in general, or under the facts of each putative class member's particularized claim, violate Defendant GB and GBBRG's constitutional rights under the provisions of the United States Constitution and California Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and the Excessive Fines and the Cruel and Unusual Punishment clauses of the Eighth Amendment to the United States Constitution, as well as the Due Process and Excessive Fine clauses contained in the California Constitution.

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THIRTY-FIFTH AFFIRMATIVE DEFENSE

As a thirty-fifth, separate and affirmative defense, any claim for putative damages or penalties for the subject causes of action are not permissible, therefore, Plaintiff and the putative class members are limited to the remedies provided by statute.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

As a thirty-sixth, separate and affirmative defense, penalties under California Labor Code §226.7 are unconstitutional.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

As a thirty-seventh, separate and affirmative defense, Plaintiff's and the putative class members' Complaint, and each and every allegation therein, is barred since, at all times, Defendant GB and GBBRG's conduct was not wrongful.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

As a thirty-eighth, separate and affirmative defense, Defendants GB and GBBRG do not presently know all of the facts and circumstances respecting Plaintiff's and the putative class members' claims. Defendants GB and GBBRG therefore reserve the right to amend this Answer should they later discover facts demonstrating the existence of additional affirmative defenses.

WHEREFORE, Defendants GB and GBBRG pray:

a. That Plaintiff's Complaint be dismissed with prejudice and that Plaintiff and the putative class take nothing thereby;

b. That the purported class not be certified;

c. That judgment be entered in favor of Defendants GB and GBBRG on all claims and that they be awarded all relief due as determined by the Court;

d. That Defendants GB and GBBRG's costs, expenses, and attorney fees in defense of this action be taxed to Plaintiff;

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e. For any other relief to which Defendants GB and GBBRG may be entitled.

Dated: May 9, 2008

ANDREWS · LAGASSE · BRANCH & BELL LLP

By: /s/ Margaret C. Bell
Margaret C. Bell
Attorneys for Defendants
GB ACQUISITIONS, INC. AND
GORDON BIERSCH BREWERY
RESTAURANT GROUP, INC.

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Andrews · Lagasse · Branch & Bell LLP 11232 El Camino Real, Suite 100, San Diego, CA 92130. On May 9, 2008, I served the within documents:

NOTICE TO ADVERSE PARTY OF REMOVAL TO FEDERAL COURT

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by electronically mailing a true and correct copy through Andrews · Lagasse · Branch & Bell, LLP's electronic mail system to the e-mail address(s) set forth above, or as stated on the above service list per agreement in accordance with Federal Rules of Civil Procedure Rule 5(b).

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, California, addressed as set forth below.

☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Andrews · Lagasse · Branch & Bell LLP described below, addressed as follows:

Michael D. Singer J. Jason Hill COHELAN & KHOURY 605 C Street, Suite 200 San Diego, CA 92101 (619) 595-3001 Attorneys for Plaintiff ANGELIQUE COBB	Jennifer B. Robinson MILLER & MARTIN PLLC 1200 One Nashville Place 150 Fourth Avenue North Nashville, Tennessee 37219-2433 (615) 244-9270 Co-Counsel for Defendants GB ACQUISITIONS, INC. and GORDON BIERSCH BREWERY RESTAURANT GROUP, INC.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 9, 2008, at San Diego, California.

/s/ Erika Andrade